IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

CRP.No. 70 of 2002(F)

RCA.5/2000 of RENT CONTROL APPELLATE AUTHORITY, KASARAGOD.
RCP.37/1997 of RENT CONTROL COURT, KASARAGOD.

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REVN. PETITIONERS: (APPELLANTS/RESPONDENTS 4 TO 9):
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1. FRANCIS, SON OF MATHEW.
THE 1ST REVISION PETITIONR IS RESIDING AT COURT ROAD, KASARAGOD.

2. AVVABI, THE 2ND REVISION PETITIONR
IS THE WIDOW AND REVISION PETITIONRS 3 TO 6 ARE THE CHILDREN OF LATE AHAMED, RESIDING AT CHATTUNKUZHI, KASARAGOD TALUK, ASMAS QUARTERS, MADHUR VILLAGE, POST HIDAYATHNAGARA.

3. SAJID.

4. SAFRAD.

5. SADATH (MINOR), AGED 14 YEARS.

6. SAAMA (MINOR), AGED 13 YEARS.
THE REVISION PETITINERS 5 AND 6 ARE MINORS REPRESENTED BY THEIR GUARDIAN MOTHER 2nd REVISION PETITIONER-AVVABI.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.JOJI VARGHESE
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

RESPONDENTS: RESPONDENTS/PETITINER & RESPONDENTS 1 TO 3:
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1. C. SRINIVASA ROA,
S/O. GURUDATHA RAO.
THE 1ST RESPONDENT IS RESIDING NEAR COURT ROAD, KASARAGOD POST & TALUK.

2. B. NARAYANA, S/O. B. RAMAPPA.
THE 2ND RESPONDENT IS RESIDING AT
RANGANATHA AVENUE, KILPAK CHENNAI,
CHENNAI POST, TAMILNADU STATE.

3. B. DEVAKI, D/O. B. RAMAPPA. (DIED)

4. B. BALAKRISHNA, S/O. B. RAMAPPA.

THE RESPONDENTS 3 AND 4 ARE RESIDING
NEAR BEACH ROAD, NELLIKUNNU, KASARAGOD TOWN,
KASARAGOD TALUK & POST.

RESPONDENTS 2 AND 4 ARE RECORDED AND ADDITIONAL RESPONDENTS 5 AND 6 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 3RD RESPONDENT AS PER ORDER DATED 25.10.2006 ON I.A.342/2005.

ADDL.R5. JOSEPH RAJU, S/O. MAINDAPPA, RESIDING NEAR MADONA CONVENT, RAILWAY STATION ROAD, KASARAGOD.

ADDL.R6. GREGORY FERNANDEZ, S/O. MAINDAPPA, NELLIKUNNU, NEAR SUBRAMANYA TEMPLE, KASARAGOD.

ADDL.R7 AND 8 ARE IMPLEADED AS PER ORDER DATED 3.7.2007 ON IA 31/2007.

ADDL.R7. VICTORIA JYOTHI AMIN, D/O. LATE MAINDAPPA AND W/O. JOHN BAPTIST LOBO, RESIDING AT JYOTHI NIVAS, BEERARANANGALA, NEAR CHURCH, POST SULLIA, D.K.DISTRICT, KARNATAKA.

ADDL.R.8. STANSLANE JOHN SANJAY AMIN B., S/O. LATE MAINDAPPA, AMIN NIVAS, NELLIKUNJE (PALLA), BEACH ROAD, KASARAGOD.

R1 BY ADV. SRI.S.V.BALAKRISHNA IYER
R3 TO 6 BY ADV. SRI.M.SANTHOSHKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

C.R.P. No.70 of 2002 - F

Dated, this the 6th day of August, 2007

ORDER

Balakrishnan Nair, J.

The petitioners were respondents Nos.4 to 9 and the respondents herein were the petitioner and respondents Nos.1 to 3 before the Rent Controller.. The 1st respondent herein filed the rent control petition under sections 11(2), 11(4)(i) and 11 (4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The case of the landlord is briefly stated below:

The petition schedule building belonged to Gurudatha Rao, father of 1st respondent. He leased out the building to one Mr. B.Arasappa for a period of six months. Thereafter he was holding over the tenanted premises. After the death of Gurudatha Rao, petitioner and other legal heirs of Gurudatha Rao were collecting rent. Arasappa paid the rent upto 1.1.1990. He died on 17.7.1997. Thereafter respondents Nos.1 to 3 (the legal heirs of Arasappa) were in possession of the petition schedule room. They have locked the room without using it for some time. Thereafter it was sublet to the 4th respondent which was contrary to the terms of the lease agreement. The 1st respondent (petitioner) issued notice on 3.10.1997 calling upon the legal heirs of Arasappa (respondents Nos.2 to 5 herein) to pay the arrears of rent and surrender the building. Thereupon they sent a reply notice stating that Arasappa had already surrendered the building on 31.1.1990 and the petitioner has leased out the building to one Mr. Francis (4th respondent in the rent control petition). The 4th respondent in the rent control petition replied stating that he was a paid typist of late Ahammed. After the death of Ahammed, he is working for Ahammed's legal heirs who were respondents Nos.5 to 9 in the rent control petition. Ahammed was a

tenant under the 1st respondent (petitioner). Respondents Nos.5 to 9 in the rent control petition contended that late Ahammed was the tenant under the petitioner landlord since 1.4.1990 and he was paying a monthly rent of Rs.100/-. He was in occupation of the building till his death. Thereafter his legal heirs are in occupation and Mr. Francis is their employee.

2. From the side of the petitioner, PW.1 was examined and Exts.A1 to A11 were marked. From the side of the respondents RW.1 was examined.

3. The Rent Controller allowed the petition under secs.11(2), 11(4)(i) and 11(4)(v) of the Act. Respondents Nos.4 to 9 in the rent control petition filed R.C.A.No.5 of 2000. The Rent Control Appellate Authority considered the evidence and materials on record and dismissed the appeal affirming the findings of the rent controller. Hence this revision challenging the appellate judgment.

4. The first point considered by the appellate authority is whether the rent control petition is maintainable. Admittedly the petitioner before the rent controller being a co-tenant, the appellate authority found that the rent control petition is maintainable at the instance of one of the co-owners. The said finding is not seriously challenged in this revision.

5. The next point considered by the appellate authority was whether deceased Arasappa continued as the tenant of the building till the date of his death and whether thereafter his legal representatives sublet the building to the 4th respondent. The appellate authority found that except the self-serving statement of the 4th respondent, no evidence was adduced to show that Arasappa surrendered the building to the landlord on 31.3.1990 and late Ahammed had taken the building on rent from the petitioner (landlord). The assessment register of the Kasaragod municipality for the years 1994-95 and 1996-97 would show that Arasappa was the occupier of the building during that period. Further, to

a notice issued demanding arrears of rent, Arasappa issued Ext.A8 reply on 3.3.1990 admitting that there is arrears of rent. Ext.P9 is the judgment in O.S.No.327 of 1988 which is filed by the petitioner (landlord) against Arasappa seeking an injunction. The said suit was dismissed on 27.7.1990. On appeal the decision in the suit against the landlord was reversed by judgment dated 23.2.1993 in A.S.No.2 of 1991and the suit was decreed. In the said appeal Arasappa contended that he was in occupation of the building in 1993. So the above materials would show that the contention that Arasappa vacated the premises on 1.4.1990 is not correct. On the basis of the above materials, both the authorities concurrently found that Arasappa was in possession upto the date of his death in 1997. It is a finding of fact based on the materials on record and it cannot be said to be perverse. So, we cannot interfere with it under section 20 of the Kerala Buildings (Lease and Rent Control) Act. In view of the said finding the very foundation of the case of the revision petitioner collapses. According to him Arasappa surrendered the building in 1990 and thereafter one Ahammed was in occupation and he was an employee of Ahammed and later an employee of the legal heirs of Ahammed. In view of the above position, the irresistible inference that can be drawn is that the 4th respondent in the rent control petition (1st petitioner herein) is a sub-tenant under the legal heirs of Arasappa.

Therefore we find nothing illegal, irregular or improper with the judgment of the appellate authority. Accordingly, the revision petition fails and it is dismissed.

K. BALAKRISHNAN NAIR, JUDGE

HARUN-UL-RASHID, JUDGE.

mt/-

K.BALAKRISHNAN NAIR &
HARUN-UL-RASHID, JJ.

C.R.P. No. 70 of 2002-F

ORDER

6.8.2007